

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Amendment of the Commission's Rules)

Regarding Installment Payment Financing for)

Personal Communications Services (PCS))

Licensees)

WT Docket No. 97-82

COMMENTS

Carolina PCS I Limited Partnership ("Carolina"),^{1/} by its attorneys and in response to the Further Notice of Proposed Rulemaking ("FNPRM") in the above-captioned proceeding,^{2/} hereby files its comments on the Commission's proposed revisions to the rules governing C and F Block auctions and services.

I. INTRODUCTION

Prompted by numerous petitions seeking waivers, forbearance, or amendment of Commission rules related to Designated Entity eligibility to hold C and F Block licenses, the Commission released the FNPRM in an attempt "to provide meaningful opportunities to small businesses, to speed the deployment and development of new services to the public, to encourage the efficient use of

^{1/}Carolina's subsidiaries are the C Block PCS licensees for all BTAs in the State of South Carolina.

^{2/}Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications (PCS) Licenses, WT Docket No. 97-82, FCC 00-197, Further Notice of Proposed Rulemaking, rel. June 7, 2000 ("FNPRM").

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spectrum, and to recover for the public a portion of the value of spectrum.”^{3/} While Carolina urges that these goals can be met by retaining the current structure for the upcoming C and F Block Auction No. 35, it provides these comments to ensure that *if* the Commission does indeed amend the rules, the ensuing changes actually “provide meaningful opportunities to small businesses.”

II. DISCUSSION

A. Summary of Tentative Conclusions and Proposals

The Commission seeks comment on its tentative proposal to divide each 30 MHz C Block license available in Auction No. 35 into three 10 MHz licenses. The Commission reasons that, by increasing the number of available licenses, this reconfiguration will promote wider auction participation and license distribution. In addition, the Commission believes that, as a result of its proposal, small bidders should find bidding for 10 MHz licenses more affordable, while large bidders should enjoy greater flexibility in tailoring their bidding to their business plans without running afoul of the spectrum cap.^{4/}

The Commission proposes “to permit bidders to aggregate the 10 MHz C Block licenses, subject only to the overall 45 MHz CMRS spectrum cap, and the relevant remaining eligibility restrictions for these licenses.”^{5/} In addition, the Commission’s proposal envisions classifying the Auction No. 35 BTAs into two tiers: “Tier 1” will comprise BTAs whose populations equal or

^{3/}FNPRM at ¶ 24.

^{4/}The Commission also seeks comment on whether a different configuration, including adoption of blocks of 20 MHz where possible, would be more appropriate to provide meaningful opportunities for potential bidders, including new entrants into particular geographic markets.” *Id.* at ¶ 16.

^{5/}*Id.*

exceed a certain threshold (e.g., 2.5, 2.0 or 1.5 million); “Tier 2” will comprise BTAs with populations below that level.^{6/} The Commission tentatively concludes that eligibility requirements should be removed for two of the three 10 MHz C Block licenses in Tier 1, and one of the three 10 MHz C Block licenses in Tier 2.^{7/}

The Commission also requests comment on whether to eliminate eligibility requirements for F Block licenses available in Auction No. 35 or to divide F Block markets in tiers, as discussed above for C Block BTAs. Further, the Commission proposes to lift eligibility restrictions for all 15 MHz C Block licenses available at Auction No. 35 and in future C Block auctions, and seeks comment on lifting all eligibility restrictions on any C or F Block licenses that remain unsold after Auction No. 35 or in other future auctions. Finally, the Commission also proposes to: clarify the grandfather exception; revise the bidding credits available for Auction No. 35; alter the transfer requirements; eliminate the license cap; and retain the spectrum cap.

B. Carolina Conditionally Supports the Tiered Approach Proposed by the Commission

Although Carolina still believes that DE spectrum should be reserved exclusively for qualifying entities, Carolina will conditionally accept the proposed two-tiered, three license architecture, *provided* that a *bona fide* DE with a legitimate requirement for 30 MHz in an individual BTA will have a meaningful opportunity to acquire that bandwidth under the rules ultimately

^{6/}The Commission requests comment on the optimal population cut-off between Tier 1 and Tier 2. The FNPRM also suggests creating a Tier 3 for BTAs with populations below 700,000, or declining to adopt any tiers, instead applying changes in eligibility restrictions to all BTAs, regardless of size. FNPRM at ¶ 30.

^{7/}*Id.* at ¶ 28. Further, the Commission seeks comment on whether it should allow “open” bidding for all three of the 10 MHz C Block licenses in Tier 1, and two of the three 10 MHz C Block license in Tier 2. *Id.* at ¶ 29.

adopted in this proceeding. As discussed *infra* in Section D, Carolina submits that providing bidding credits at an increased level, both for DE-only and unrestricted auctions, is crucial to extending meaningful spectrum acquisition opportunities to *bona fide* designated entities. Additionally, Carolina will conditionally accept the proposed tiers, if the population threshold is either 2.5 or 2.0 million and subject to the ability of *bona fide* DEs to obtain 30 MHz in appropriate circumstances, given the provision of increased bidding credits both for DE-only and unrestricted auctions. An “open” auction for a 15 MHz disaggregated portion of a C Block license is acceptable to Carolina where the initial 15 MHz remains licensed to a DE. However, F Block spectrum should remain the exclusive preserve of DEs to insure that at least two DE licensees collectively control 25 MHz of PCS spectrum per BTA (as envisioned when the PCS auction rules were originally adopted and winning bids originally paid).

C. Carolina Urges the Commission to Reject “Bulk Bid” Proposals

The Commission tentatively concludes that it will retain BTA service areas and a license-by-license bidding design in Auction No. 35 on a simultaneous multiple round basis as it has done in the past.^{8/} Carolina strongly agrees. This is the licensing scheme under which all original business plans are based and by which the reauction must proceed to be fair to those who have previously relied on this scheme. An alternate proposal, to auction newly-created 20 MHz C Block and disaggregated 15 MHz C Block licenses on a “bulk” (or winner takes all) basis has been universally recognized as benefitting only the proposal’s sponsor, Nextel, and is decidedly adverse to the public interest.

^{8/}*Id.* at ¶ 35.

D. Carolina Supports the Grandfather Exception, as Clarified in the FNPRM

The Commission seeks comment on its tentative conclusion that upon the merger of two entities, each of which is eligible for the “grandfather” exception, the exception extends to the resulting entity, but that, upon the merger of two entities, only one of which is eligible for the “grandfather” exception, the merged entity is ineligible for the exception.^{9/} Carolina supports this proposal.

E. Providing Bidding Credits At An Increased Level is Crucial to Providing Meaningful Opportunities and Participation for True Designated Entities

The Commission seeks comment on whether to retain existing small and very small business bidding credits (15 and 25 percent) for licenses subject to “open” bidding, or whether to increase the credits to 25 and 40 percent, respectively.^{10/} Also, the Commission asks whether bidding credits for licenses subject to closed bidding should be changed and proposes various options such as: increasing them, keeping them at current levels, or eliminating them altogether on the ground that they are unnecessary in auctions limited to DEs.^{11/}

Carolina urges the Commission to increase DE bidding credits, both for DE-only and unrestricted auctions. Adjusting these credits upwards is crucial to meeting the statutory goals outlined by the Commission in the context of relaxing C and F Block eligibility rules because the credits constitute the sole mechanism for affording *bona fide* DEs an opportunity to compete for C and F Block licenses. Although Carolina believes that raising the credits to 25% and 40% alone is

^{9/}*Id.* at ¶ 38.

^{10/}*Id.* at ¶ 41.

^{11/}*Id.* at ¶ 42.

inadequate to allow DEs a realistic opportunity to compete with non-DEs, Carolina may accept this proposed revision if it applies uniformly to *ALL* reauction spectrum, including the proposed DE-only blocks. Carolina submits that to acquire 30 MHz in a BTA, DEs will have to bid substantially more money in the “open” blocks to prevail against their non-DE rivals. Accordingly, increasing bidding credits in the DE-only auction may afford DEs, with finite capital resources, the additional financial flexibility required to more effectively bid for the unrestricted C Block licenses subject to open bidding.

Notably, the sole basis for relaxing eligibility in Auction No. 35 is the demand by incumbent 25 and 30 MHz non-DE licensees for additional bandwidth with which to offer new technologies. The Commission evidently believes that operators need more than 25 or 30 MHz in the C Block reauction markets, as its proposal contemplates offering, at least, an additional 10 MHz in “open” market auctions. Because DEs will need to offer these new technologies in order to compete with their non-DE rivals, DEs will also need more than 25 or 30 MHz in an individual BTA and must be ensured a corresponding realistic opportunity to acquire additional spectrum to remain competitive.

F. Carolina Supports More Flexible Transfer Requirements and Proposes Relaxed Financing Restrictions

The Commission proposes modifying transfer requirements to correspond to proposed changes in the eligibility requirements and to encourage rapid construction of C and F Block systems. The Commission tentatively concludes that C and F Block licenses acquired through open bidding at Auction No. 35, or any future open auction for such spectrum, will be exempt from a transfer holding rule. By contrast, for licenses acquired in restricted auctions, the Commission seeks comment on tying the holding period to completing build-out requirements; under this concept, the

licensee could assign or transfer the license to any qualified entity, entrepreneur or not, upon completion of the first construction benchmark, whether or not it takes the full five years allowed by the rules.^{12/}

The Commission also seeks comment on whether to allow some further flexibility for incumbent licensees that may not have fully satisfied construction requirements for all of their licenses. For example, the Commission seeks comment on whether carriers should be allowed to exchange and transfer licenses if the carrier can demonstrate “substantial service” throughout its system, rather than in that particular market. Further, the Commission seeks proposals on any other modifications to transfer restrictions that would provide incumbent licensees with the flexibility to restructure business plans without decreasing the incentive to rapidly construct systems and place them into operation.^{13/}

Carolina submits that this proposal must not be limited to the transfer of licenses to non-DEs, but must also allow an existing DE to reorganize its capital or corporate structure even if that process results in a technical loss of DE eligibility. According DEs this flexibility will enable them to raise additional capital and enhance their competitive capabilities. No basis has been presented for subjecting internal reorganizations and refinancings by DEs to more stringent and less flexible regulatory requirements than those governing actual DE license assignments and transfers. If a DE license can be assigned or transferred without limitation upon actual completion of its initial construction benchmark (even if prior to the five year deadline), then why should the DE that seeks

^{12/}*Id.* at ¶ 44.

^{13/}*Id.* at ¶ 45.

merely to raise additional capital or streamline its corporate structure confront a more difficult, and less accommodating, set of regulatory constraints?

As a result of the subject proposals to “open” Auction No. 35 to non-DEs in certain instances, a DE will face increased competition from large DE-ineligible entities who may ultimately control as much as 35 to 45 MHz of CMRS spectrum in a market. For the *bona fide* DE to flourish in this situation, it may need to accelerate construction and offer more innovative, cutting edge services and features to distinguish itself from its larger, financially-superior rival. While these approaches may ultimately benefit consumers and advance technological progress, they require substantial infusions of capital. The Commission’s proposals, however, do not address this issue and, as a result, *bona fide* DEs will be denied access to the capital they will need if they are to succeed in the new environment that will result from “open” auctions.

The second part of the Commission’s proposal will allow a non-DE transfer where there is “substantial service” throughout the system but not necessarily on a market-by-market basis. Carolina supports this concept, but recommends that the applicable rules, ultimately adopted, specify examples or indicia of “substantial service” so that carriers have prior notice as to the actual standards the Commission intends by this term. An indicia Carolina advocates involves taking the composite population for all of a carrier’s licenses to be transferred and the composite “pops covered” by constructed facilities to determine if, the initial construction benchmark has been satisfied overall, even if certain markets are below the benchmark.

G. Carolina Supports Lifting the License Cap

The Commission has tentatively concluded it will remove Section 24.710, which prohibits an auction applicant from winning more than 98 C and F Block licenses, from the Commission's rules.^{14/} Carolina supports lifting the license cap.

H. Carolina Strongly Supports Retention of the Spectrum Cap Rules

The Commission tentatively concludes it will not eliminate or expand the spectrum cap, denying petitions to waive or forbear the controlling rule. Carolina strongly agrees with retaining the spectrum cap. In previous comments filed with the Commission, Carolina has demonstrated how the purpose of the spectrum cap (to ensure diverse licensees and robust competition) is really a market-by-market issue.^{15/} Accordingly, retention of the spectrum cap is appropriate.

^{14/}*Id.* at ¶ 46.

^{15/}*See* Comments filed on March 3, 2000 by Carolina in connection with the Commercial Mobile Radio Service spectrum cap petitions filed by AT&T Wireless Services, Inc., Bell Atlantic Mobile, Inc., and BellSouth Corporation at p. 2-40 and at p. 8-12 of Attachment B thereto (Carolina Reply Comments in DA 00-191 filed March 1, 2000.)

III. CONCLUSION

Carolina requests that the Commission proceed with the upcoming C and F Block PCS auction, (Auction No. 35), as originally envisioned under the existing Commission rules. While Carolina submits that the preservation of the DE set-aside as originally established continues to be in the public interest, if the Commission is inclined to reconfigure the C Block spectrum size in order to open the auction to non-DEs and also modify the auction procedures, Carolina urges the Commission to make such modifications in accord with Carolina's proposals as set forth above.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Jennifer L. Clapp, a secretary with the law firm of Kurtis & Associates, P.C., do hereby certify that I have this 22nd day of June 2000, had copies of the foregoing "COMMENTS" sent via hand delivery to the following:

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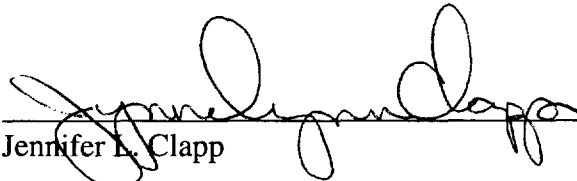
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